R1372-2

Refugee Reports

A News Service of the U.S. Committee for Refugees
1025 Vermont Avenue NW, Suite 920 Washington, DC 20005 (202) 347-3507

Volume XI, Number 5 May 18, 1990

MALAYSIA PUSHES OFF 6,500 VIETNAMESE BOAT PEOPLE; LIVES THREATENED, INTERNATIONAL ACCORD IN JEOPARDY

[This article, written by Refugee Reports staff writer Court Robinson, is based on a site visit to Malaysia in April. Robinson, representing the U.S. Committee for Refugees, and Lionel Rosenblatt, executive director of Refugees International, visited Pulau Bidong and Sungei Besi camps, and interviewed dozens of Vietnamese boat people, including several pushback victims, as well as officials with the UN High Commissioner for Refugees, the Malaysian government, and the U.S. embassy in Kuala Lumpur.]

Since May 1989, with little warning or fanfare, Malaysian authorities have been pushing boatloads of Vietnamese asylum seekers back out to sea. A total of 6,577 people subsequently have turned up in Indonesia. Six deaths are known to have resulted from pushback incidents, and many more are feared.

The crisis has escalated in 1990. Since January, an increasingly larger percentage of boat arrivals in Malaysia have been towed back out to sea. In March, only three boats, totalling 122 people, were granted asylum, as 90 percent of the new arrivals were pushed off.

The responses of Malaysian government officials range from denial to rationalization to angry counterattack. The government's basic position, as articulated by several officials, seems to be: Malaysia has granted temporary asylum to more than 250,000 Vietnamese refugees in the course of 15 years, but the problem has become burdensome, as well as a political liability, and if the United States really wants to help the Vietnamese, it should either take them off Malaysia's hands or agree to the repatriation of the screened-out. Until then, pushbacks will continue.

The countervailing view held by, among others, UNHCR, the U.S. government, and a number of private advocacy groups could be stated as follows: While Malaysian frustrations with the long-running Vietnamese exodus are understandable, nevertheless Malaysia ratified the Comprehensive Plan of Action (CPA) in Geneva last June, which commits asylum countries to provide temporary refuge to all asylum seekers.

IN THIS ISSUE:

This month, Refugee Reports focuses on the pushback of Vietnamese boat people by Malaysian authorities. Court Robinson looks at the history of pushbacks by Malaysia, the escalation of pushbacks in recent months, the international war of words that pushoffs have engendered, and the threat to first asylum in Southeast Asia.....1

● Update

Haitians deported by U.S. arrested in Port-au-Prince....8
U.S. court orders State Department to release names of returned Haitians.....8
INS fires Krome employees who reported mistreatment.....8

● Recent Developments

Administration spells out FY 91 refugee budget request...9
House hearing focuses on refugee crisis in Africa.....10
"Excludable" asylum seekers paroled in pilot program...11
Congress looks at violence on U.S-Mexico border.....12

● Resources

Immigration law reference works available.....13
Amnesty Intl. on Vietnam...15

● Statistics.....16

Pushbacks, being fundamentally inhumane and in violation of the CPA, should be halted immediately and unequivocally.

Between these polar viewpoints lies a sea of contending positions and propositions on screening, involuntary repatriation, holding centers, resettlement, clandestine departure, and orderly departure from Vietnam.

Meanwhile, the countries of asylum in Southeast Asia have just issued their clearest warning ever that, unless there is consensus very soon on a solution for the screened out--either involuntary return or transfer to a holding center, the commitment to temporary refuge will be abandoned regionwide.

Pushbacks Have a Precedent Shortly after Saigon fell to the North Vietnamese in April 1975, a small but steady trickle of boat people began to depart the newly socialist south. UNHCR statistics show that by the end of 1977, about 7,000 Vietnamese had arrived in Malaysia.

In 1978, however, the flow expanded dramatically, as the new government in Vietnam began to systematically expel its unwanted ethnic Chinese population. In that year alone, more than 88,000 boat people arrived in neighboring Southeast Asian countries. By far the largest number, 63,000 in all, came ashore in Malaysia.

In November 1978, as a signal of its mounting displeasure with the refugee influx, Malaysian authorities refused to allow 2,500 Sino-Vietnamese to disembark from the rusty freighter, Hai Hong.

When a border war broke out between China and Vietnam in February 1979, the refugee flows grew still larger, with more than 200,000 Vietnamese fleeing in 1979. Official figures show 52,000 boat arrivals in Malaysia that year, but that tells only half the story.

In mid-June 1979, according to Malaysian news accounts, government officials declared that they were going to ship the 70,000 Vietnamese living on the squalid and horribly overcrowded island camp of Pulau Bidong back out to international waters, and moreover would shoot at any more trying to land.

In fact, international refugee officials assert, Malaysia had started pushing boats back as early as February 1979. By June 19, Minister of Interior Tan Sri Ghazali told the New Straits Times, Malaysia had pushed back 40,529 boat people.

A Bangkok Post article dated June 23, 1979 reported that "Malaysian military forces forced back two refugee vessels crammed with up to 2,000 refugees. Malaysian soldiers fired M16 rifles into the air and water around a 25-foot boat twice...to keep it from landing."

An unknown number of boat people drowned or died from exposure, starvation, or pirate attack before Malaysia agreed to halt pushbacks in July 1979. One U.S. government estimate put the death toll at "perhaps several thousand refugees."

Round Two of Pushbacks Began Last May For exactly a decade since the 1979 pushbacks, Malaysia maintained one of the more generous records in the region, granting temporary asylum to more than 253,000 Vietnamese boat people, as well as offering permanent resettlement to 2,500 Burmese Muslims and 7,000 Cambodian Muslims.

For seven years, boat arrivals declined along with refugee camp populations, as departures for resettlement consistently outpaced the new arrivals. In September 1987, Vietnamese refugees in Malaysia totalled only 7,200, the lowest figure in at least ten years.

But in October 1987, more than 1,500 boat people arrived in Malaysia, the largest monthly total in many years. As the trend persisted into 1988 and early 1989, Malaysia's patience, once again, began to wear thin.

On March 14, 1989, Malaysia issued a statement in conjunction with the other members of the Association of Southeast Asian Nations (ASEAN) requiring all Vietnamese arrivals after that date to pass a refugee screening interview before they would be allowed to seek resettlement in another country.

Intended as a deterrent, the regional cut-off date instead inspired what a UNHCR official called a "last-chance mentality," and Vietnamese boat outflows surged higher. From April to June, more than 37,000 Vietnamese reached regional asylum countries; of these, 6,200 came to Malaysia.

Although it was not reported in the Western press, Malaysian policy on Vietnamese boat arrivals had shifted more radically than the ASEAN statement suggested.

In 1978, more than 63,000 Vietnamese boat people came ashore in Malaysia. In early 1979, Malaysia pushed 40,500 back to sea, where several thousand perished. UNHCR

On March 18, Deputy Prime Minister Abdul Ghafar Baba told the New Straits Times that all Vietnamese boat people were considered illegal immigrants and would be turned away.

"The government's stand is that Vietnamese refugees who arrive here from March 14 are considered illegal immigrants. As such, we will deport them." Asked to elaborate, Ghafar said that "on humanitarian grounds" the navy and marine police would allow Vietnamese boats to land and reprovision before towing them back to sea.

Despite the government's rhetoric, refugee boats were allowed to land in March and April. On May 4, the field director of a private refugee agency in Malaysia sent a cable to his home office in New York, saying that "the status quo--no pushoffs, continued first asylum, access to camp population, facilities, and service--remains intact."

Some time around May 25, however, according to UNHCR officials, Malaysian coastal authorities began to tow some Vietnamese boats back out to sea. Press reports indicated that by July 7, more than 900 Vietnamese asylum seekers in Indonesia reported they had been pushed off from Malaysia.

Government officials initially were quick to deny that pushbacks were state policy. "As far as the Foreign Ministry is concerned, there is no such policy," Foreign Minister Abu Hassan Omar told the Far Eastern Economic Review.

By mid-August, pushback survivors in Indonesia numbered more than 1,200. Figures provided by the U.S. refugee program in Malaysia indicate that from May to August, about 30 percent of Vietnamese boats attempting to arrive in Malaysia were towed back to sea.

Western diplomats in Kuala Lumpur told the Washington Post in August that one man drowned when his boat capsized while being towed back out to international waters.

Five Deaths Result From Pushback in October On October 23, 1989, the UNHCR representative in Singapore issued a press release saying, "Sixty-two Vietnamese boat people arrived in Singapore yesterday, after 52 days at sea. Six persons died on the journey, three of them after the boat was reportedly towed away from Malaysian waters."

A group of 68 people left Cuu Long in southwest Vietnam on September 1, according to the UNHCR statement. Three days out, their engine broke down and could not be repaired. By the time the boat encountered a Malaysian vessel on October 15, one man was dead from dehydration and starvation and two more were missing, having set out earlier in a small sampan to look for land.

The Malaysians reprovisioned the Vietnamese boat and promised to tow them to shore, but instead towed them back to sea for 19 hours.

"The tow rope was cut without warning," the release said, "and the boat set adrift. Two more people, a man and a woman, died of dehydration and starvation. On October 20...the group was rescued by the Anezina [a Greek-owned vessel] about 75 miles off the coast of Borneo... One more woman died, leaving two young children.

"The group disembarked from the Anezina on October 22. Many could not walk unassisted, and twelve people were brought immediately to Singapore General Hospital, where one woman pregnant and in her thirties, remains in critical condition." Two days later, the woman, and her unborn baby, died.

Shortly after this incident was reported, Prime Minister Mahathir Mohamad virtually acknowledged that pushbacks were occurring, although he told the British Broadcasting Corporation (BBC) that this represented only a "slight shift" in Malaysian policy.

"All we are doing is we are preventing foreign vessels from entering our waters," Mahathir said. "I'll admit that in the past because of the assurances that these people will be resettled, we have allowed them to come in as easily as possible. But now we find that people are not giving that assurance and our own people are beginning to get agitated... There is a limit to the things we can do."

On October 26, the UNHCR representative in Malaysia, Eric Morris, issued a statement accusing Malaysia of violating its commitments under the Comprehensive Plan of Action (CPA) to provide temporary refuge to all asylum seekers.

In June 1989, Malaysia chaired an international conference in Geneva, at which more than 70 nations endorsed an agreement on Vietnamese asylum seekers, which included commitments by participants to discourage clandestine departures from Vietnam while expanding regular departure programs; provide temporary refuge for all asylum seekers; establish consistent, regionwide refugee screening procedures; resettle "long-stayers" and newly screened-in refugees; and provide for the repatriation--voluntary or otherwise acceptable under international practices--of the screened-out.

"It sets an extremely unfortunate precedent when an agreement is entered into one moment and repudiated at the next moment," Morris said in the UNHCR statement. "Malaysia was elected to the presidency of the international conference. International recognition must surely entail a commitment to fulfill international responsibilities."

The Crisis Escalates From September to December 1989, pushbacks continued at a rate of about 30 percent of all arrivals. By the end of the year, more than 3,000 pushback victims had arrived in Indonesia, while about 7,100 Vietnamese arrivals had been allowed to stay in Malaysia since May.

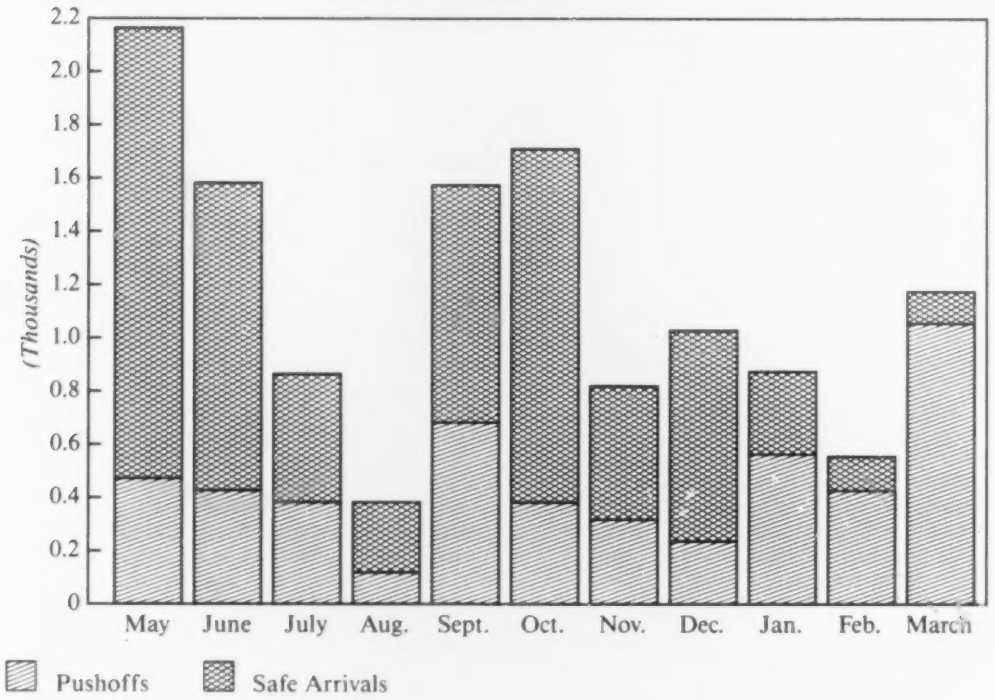
But in January 1990, only 309 Vietnamese arrivals were counted in Malaysia, the smallest number in almost three years. Arrivals in Indonesia, meanwhile, jumped above 1,000, an uncharacteristically large number, especially for January. Malaysian navy and marine police, as it turned out, had pushed back more than 65 percent of all would-be asylum seekers.

In February, 77 percent of all Vietnamese reaching Malaysia were pushed back, and in March, 90 percent of all arrivals were towed back out to sea. Only three boats, totalling 122 people, were allowed to remain in Malaysia in March. Refugee program sources told the U.S. Committee for Refugees (USCR) that those boats probably would have been pushed off as well, if they had not arrived in very public locations or in view of international officials.

Pulau Bidong, an island camp off the

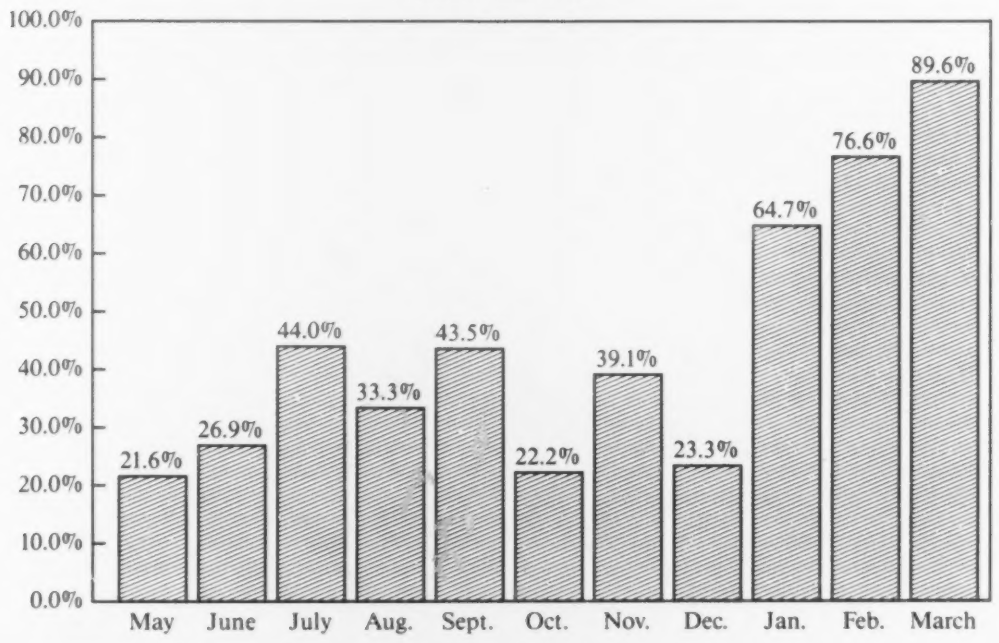
MALAYSIA: SAFE ARRIVALS VS. PUSHOFFS

PERSONS, FROM MAY 1989



PUSHOFFS AS % OF TOTAL ARRIVALS

FROM MAY 1989



Source: U.S. Refugee Program, Malaysia

east coast state of Trengganu and the main facility for Vietnamese asylum seekers since it was established in August 1978, has been blockaded since February, these sources told USCR. "We always have had Marine police boats patrolling Pulau Bidong," one source said. "But there are more police boats now around the island, and one boat sits at the jetty. Navy boats and even helicopters also have been seen cruising the area. Since the blockade was established, seven boats have attempted to arrive at Pulau Bidong. Five made it, but two were towed away."

An official with the Trengganu state office of Task Force VII, the Malaysian government agency responsible for refugee programs at the national and state levels, told USCR, in response to a question on pushbacks and the blockade, "I do not know if that is true. As far as I am concerned, we receive them. I told the camp commander [in Pulau Bidong] to receive these boats. Within 200 meters of the island, that is my territory. The navy and marine police take care of the sea. That is not my responsibility."

"I Cannot be a Hero Here" Of the 18,750 Vietnamese boat people in Malaysia, just over 13,000 are on Pulau Bidong. All of them arrived after the March 14 cut-off date and must undergo screening. Although the Bidong camp population is well below the record high of 38,000 in 1978, overcrowding is again a serious problem. It is the policy of the Trengganu state government that no new facilities be built on the island as "that would invite more Vietnamese to come," said the Task Force VII official.

The double-story wooden longhouses originally designed to house between 70 and 80 people now hold more than twice that number. At least ten of the buildings are in imminent danger of collapse.

Despite the estimated $4 million annually that the camp contributes to the local economy, Pulau Bidong and the Vietnamese refugees have long been an unpopular issue with local politicians, and a source of tension between Trengganu state and Mahathir's ruling party, United Malays National Organization (UMNO).

"When you talk about refugees, the state government is very uncomfortable," the Task Force VII official told USCR. "We cannot control the opposition to this issue. The fishermen have lost 10 million Ringits [about $3.7 million] in the last 15 years, because they cannot go near the island. When I go to see my mentri besar [chief minister], all he asks me is, 'Berapa ramai, how many of them now?' When you talk about refugees in Trengganu, I cannot be a hero here."

War of Words Heats Up On April 12, Prime Minister Mahathir refuted foreign news reports that pushbacks were taking place. "If you do not believe me," he said, "you can go to Pulau Bidong and see for yourself the large number of refugees staying there."

Mahathir also denied receiving any official protests from UNHCR, which prompted a reply the next day from the UNHCR office in Kuala Lumpur stating that "UNHCR has been engaged in a constant dialogue with the government of Malaysia on all aspects of the Vietnamese boat people issue... It is our hope that the governments will continue to adhere strictly to the CPA and refrain from precipitous measures, particularly relating to first asylum, for failure to do so would be detrimental to all concerned parties, not least to the human beings whose plight it was intended to address."

Three days later, the State Department issued a much sharper rebuke of the pushback policy. "The United States has vigorously protested the denial of first asylum to Vietnamese at all appropriate levels of the Malaysian government," said spokeswoman Margaret Tutwiler at an April 16 press briefing. "The exact number of Vietnamese turned away from Malaysia will never be known," she said, but at least four people "have perished as a result of Malaysia's actions."

The Malaysian ambassador in Washington, Albert Talalla, responded by saying, "I am not in a position to comment on allegations of 'towing away' of boat people but I consider Mrs. Tutwiler's comments as unhelpful to the process of reaching a comprehensive settlement of the Vietnamese refugee problem."

On April 19, Deputy Prime Minister Abdul Ghafar Baba reiterated Malaysia's commitments to the CPA and to first asylum. "Actually, the boat people do not want to stay in Malaysia," he said. "So they make a short stop in our waters to seek assistance such as food and medicine, which we help

them with.... If they ask us to repair the engines of their boats, we help them. They leave of their own choice."

"That simply is not true," said Lionel Rosenblatt, executive director of Refugees International, who visited Malaysia with USCR. "Based on interviews with boat people on Pulau Bidong and reports from Indonesia, we know that boats are not necessarily re-provisioned or repaired. Boats laden with men, women, and children are towed out to sea at high speed, which is extremely alarming and dangerous, and left to fend for themselves. Compasses and maps have been confiscated, and intentionally misleading directions given by Malaysian authorities. And virtually all of the asylum seekers have pleaded desperately not to be put back to sea."

One pushback victim interviewed on Pualu Bidong told USCR that his group of 51 asylum seekers had arrived in Sarawak in east Malaysia on June 25, 1989. Malaysian marine police told them they would be transferred to Pulau Bidong. Instead, they were towed out to sea for 12 hours, their compass and sea charts were confiscated, and they were pointed toward an island and told it was Pulau Bidong.

In fact, Pulau Bidong was still far away. The Vietnamese were attacked and robbed by local fishermen. They made their way back to Malaysia, where they were detained for two months in a deserted area.

On September 21, the group was put on what one called "a very old Vietnamese escape boat" and again towed back out to sea. "But the boat was in bad condition, leaking a lot," one man told USCR. "We were very frightened and begged for help, and told them to stop. Finally, they brought us back to land."

Through two helpful Malaysians, the group sent out letters to the Malaysian Red Crescent Society (MRCS), foreign embassies in Kuala Lumpur, and relatives in the United States. Finally, MRCS officials arrived in Sarawak and told the Vietnamese they had been allowed to stay. On November 4, more than four months after they left Vietnam, the asylum seekers reached Pulau Bidong.

First Asylum is on the Line in Southeast Asia Since the CPA was endorsed last June, U.S. policy has been opposed to involuntary repatriation to Vietnam, although at a CPA steering committee meeting in January, the U.S. delegation offered a compromise of a one-year moratorium on involuntary return of the screened-out in order to achieve international consensus on the issue.

The other CPA participants, however, rejected the one-year period, and the United States, in turn, rejected any shorter intervals. The other steering committee members had called for a six-month moratorium, except Vietnam, which had proposed nine months.

Failure to reach consensus on the involuntary return of the screened-out, in the view of Malaysia and other first asylum countries, constitutes what they have called "selective implementation" of the CPA, and absolves them of the responsibility to honor their own commitments.

At a CPA meeting in Manila on May 17, 1990 the countries of temporary refuge in Southeast Asia--including Malaysia, Thailand, Indonesia, Singapore, Philippines, and Hong Kong--issued a statement saying that, "The viability of the CPA...has been undermined by selective implementation of its provisions. While countries of temporary refuge have been urged to continue to provide first asylum, crucial elements of the CPA have either not been given due focus or totally ignored."

The statement, which one representative said was "mostly directed at the U.S. and Vietnam," called on Vietnam to take more effective measures to deter clandestine departures and promote the Orderly Departure Program, and set a date of July 1, 1990, for implementing involuntary return of screened-out applicants for refugee status.

"There is an obligation on any country which opposes the repatriation of non-refugees who do not volunteer," the statement continued, "to offer an effective intermediate solution, such as the setting up and financing on its own territory of a regional holding center for all non-refugees."

Failure to agree on involuntary repatriation of the screened-out, or any intermediate solutions, according to the statement, gives the countries of asylum "the right to take such unilateral action as they deem necessary to safeguard their national interests, including the abandonment of temporary refuge."

The British government endorsed the

Asian statement and released a letter from Francis Maude, minister of state of foreign and commonwealth affairs, to U.S. Deputy Secretary of State Lawrence Eagleburger, asking the United States to take the 9,000 screened-out Vietnamese in Hong Kong and house them in a special camp, possibly on Guam.

A State Department spokesperson rejected the idea of a holding center on Guam, and reiterated U.S. opposition to involuntary repatriation. "We believe a holding center for screened-out Vietnamese on U.S. territory would create a powerful magnet effect," the spokesperson said, "and would thereby undermine a major aspect of the CPA, which is to encourage the screened-out, after a reasonable time, to return to their country of origin."

The United States is prepared "in principle," said the State Department official, "to consider a regional holding center" and noted that UNHCR "has been exploring possible locations in the region."

But will any country in the region be willing to provide such a holding center and, if so, would the United States agree to foot the bill? If not, will the U.S. government compromise on the issue of involuntary return in order to preserve first asylum for Vietnamese boat people? And, perhaps most importantly, will any of these questions be answered in time to avoid a total breakdown of the CPA?

"There are only three options facing us," Rosenblatt said, "and we must choose quickly. One is the holding center for screened-out. The second is mandatory repatriation with appropriate safeguards. The third option is chaos and tragedy, which is clearly already waiting in the wings."

Update

° Some 42 Haitians deported from the United States in May were arrested upon their arrival at the Port-au-Prince airport and detained without charge in Haiti's National Penitentiary. All but one of the detainees has since been ordered released by a Haitian judge.

On May 7, 27 Haitians were deported from the Immigration and Naturalization Service's (INS) Krome facility in Florida. The other 15 were deported on May 12 from Texas.

Judge Andre Normil ordered the release of the detainees, except for one who had faced criminal charges in the United States. A U.S. embassy spokesperson had told the Associated Press that the detainees were being held as part of an investigation of false documents and organized alien smuggling.

° A U.S. district court in Florida has ordered the State Department to release the names and addresses of Haitian nationals returned to Haiti, pursuant to a Freedom of Information Act (FOIA) request. The State Department had held that release of the names would have been an invasion of their privacy. Senior Court Judge David Dyer ruled, however, that "the public has a legitimate interest in the safe relocation of returned Haitians." The State Department has appealed Judge Dyer's decision, saying that national security would be violated if the names are disclosed. Oral arguments are scheduled for May 24.

° Three "whistle blowers" who had worked in INS's Krome facility in Florida and had reported mistreatment of detainees there have recently been dismissed.

One of the three, Janine Todaro, a teacher who had worked at the facility for six years, was fired in May. Her photograph had appeared on the front page of the Miami Herald on April 11 in a story alleging physical and mental abuse of detainees (see Refugee Reports, Vol. XI, No. 4). In that story, she told of a former guard who beat a detainee so severely that he broke his arms and legs, leaving him looking "like a ragdoll on the floor." She was quoted saying, "What goes on at Krome is more horrible than anyone on the outside can imagine." After her dismissal, Todaro told the New York Times on May 16, "The message this sends to others working at Krome is: Don't complain, because they'll get rid of you." A spokesman for Krome told the Times that Todaro was dismissed due to "a lack of security guards to work on the weekends when she was teaching."

° A suit was filed in a U.S. district court in southern Texas on April 16 on behalf of a detainee at the INS's Port Isabel Service Processing Center alleging unnecessary, unreasonable, and excessive

use of force and medical neglect.

The plaintiff, a citizen of the Dominican Republic, alleges that INS officers in full riot gear, including helmets and clubs, entered the barracks on or about the evening of March 5, and began roughly handling and handcuffing detainees, despite an absence of any disturbance prior to their arrival. He claims to have said, "Why are you doing this in such a manner? We are human beings," at which point he alleges that the INS officers "pounced" on him. The plaintiff claims that he was handcuffed, manhandled, and thrown against a door, causing unconsciousness and cuts on his arms, face, legs, and feet. The suit says that he was denied medical attention until the following morning.

° Canadian Minister for Employment and Immigration Barbara McDougall said on May 7 that tranquilizing drugs are used for people resisting deportation. "This has gone on for years," she said. "This is not new." Nevertheless, the revelation caused quite a stir in the Canadian press, with front-page coverage of the story and heated reactions from medical and legal figures.

Dr. Philip Berger, a physician who works with Amnesty International and the Canadian Center for the Prevention of Torture, told the Toronto Globe and Mail, "If doctors are doing it, it's unethical; and if immigration officials are doing it, it's illegal."

° The UN special coordinator for emergency relief in Mozambique, Peter Son Kin, warned recently that the shortfall in international assistance to Mozambique could lead to "widespread starvation." At an April 26 meeting at the UN, the Mozambican government appealed for $136 million in emergency aid. The amount pledged, however, was $30 million less than that. According to Son Kin, $15 million is needed to airlift food to people in isolated districts who could face famine and death later this year if help does not reach them.

° The State Department has supported the asylum claim of a Chinese couple who claimed asylum based on China's one-family, one-child policy. The case tests President Bush's directive that forced abortion should be considered as grounds for asylum (see Refugee Reports, Vol. X, No. 12).

Recent Developments

ADMINISTRATION SPELLS OUT FY 91 REFUGEE BUDGET REQUEST: 110,000 FUNDED ADMISSIONS

The closing of the Rome-Vienna pipeline for Soviet refugee processing will bring a savings of about $40 million, which, State Department officials told a Senate hearing on May 7, would be shifted to the overseas refugee assistance program.

Saying that the last of the Soviet refugees would be processed out of Rome at the end of May, Ambassador Jewel S. Lafontant, U.S. Coordinator for Refugee Affairs, said that Soviet refugee processing has now shifted to the U.S. embassy in Moscow (see Refugee Reports, Vol. X, No. 9). Lafontant said that more than 500,000 applications for the U.S. refugee program have been distributed in the Soviet Union since October 1, 1989, when the new policy went into effect, and that 200,000 of those applications are now in some stage of processing.

Of the total of 110,000 funded refugee admissions places reflected in the FY 91 budget, some 40,000 will be for Soviet refugees. Ambassador Princeton N. Lyman, the director of the State Department's Bureau for Refugee Programs, said that if special immgrant legislation proposed by the Administration is enacted, "the total number of Soviets immigrating to the U.S. in FY 91 could exceed the FY 90 number."

Regional Breakdown of Projected Refugee Admissions In addition to the 40,000 refugees from the Soviet Union, the FY 91 budget allows for 5,500 from Eastern Europe; 6,000 from the Near East and South Asia; 3,500 from the Western Hemisphere; and 3,000 from Africa (see chart, p. 16).

A total of 52,000 would be admitted from East Asia, of whom 23,000 would come from refugee camps in the region and 14,000 directly from Vietnam. The remaining 15,000 would be Amerasian immigrants and their relatives. "Our ultimate goal," said Lafontant, "is to admit all Amerasian children and their family members who wish to come to the United States."

Lafontant said that the 110,000 admissions places suggested by the budget request

do not include additional refugees whose admission could be privately funded. She said that the Cuban, Jewish, Vietnamese, and Zoroastrian communities have, thus far, taken advantage of the opportunity to privately fund refugee admissions, and said, "We would welcome the opportunity to consider with the private sector what would be possible again in FY 91."

Savings Shift to Overseas Assistance

Lyman said that the closing of the Rome-Vienna pipeline would enable the State Department to reduce the refugee admissions budget by $46.7 million. In response to a question on whether those savings would be shifted to overseas refugee assistance, Lyman told Sen. Patrick J. Leahy (D-Vt.), chairman of the Senate Appropriations Foreign Operations Subcommittee, that the Department "will shift that to assistance," which will be increased by $46.5 million.

There remained some ambiguity, however, about whether a conscious shift within the Migration and Refugee Assistance (MRA) account had occurred. Lafontant, in responding to the same question, said there would be "no shift in the budget submission."

The State Department's MRA budget request for FY 91 includes $215.2 million for overseas refugee assistance, while the FY 90 MRA budget for assistance is $168.7 million.

The increase in the FY 91 budget for refugee assistance would not be as high as $46.5 million, Lyman suggested, if funds drawn from the Emergency Refugee and Migration Assistance (ERMA) account are included in FY 90 overseas assistance figures. Of the $50 million in the ERMA account for FY 90, the State Department thus far has obligated $31.9 million, Lyman said. Since then, the Administration has drawn an additional $7 million from the ERMA account for the UN Relief and Works Agency (UNRWA) for Palestine Refugees in the Near East.

Counting ERMA expenditures so far in FY 90, the actual increase in the FY 91 assistance request would be a more modest $7.6 million. However, additional ERMA funds could be spent later in FY 90 (or in FY 91), making a definitive comparison impossible at this point.

Assistance Versus Resettlement Although saying he was "impressed" with the increased amount requested for assistance in FY 91, Leahy observed that "the amount we spend [on assistance] has fallen" over the past five years. Five years ago, he said, the United States contributed $20 per refugee per year, but today, he said, the U.S. per-capita contribution had fallen to $12.

Roger Winter, director of the U.S. Committee for Refugees, agreed. He quoted from an April 4 State Department cable saying that the cost of resettling refugees in the United States "is to a large extent a trade-off with U.S. assistance to 15 million [refugees] in place worldwide."

"My problem," said Winter, "is with what the State Department has called a 'trade off,' a word I had hoped never to see from our government in the refugee context."

Although the FY 91 budget reflects a small shift toward the assistance side, Winter said that the trend for several years has been in the other direction. "We suggest," said Winter, "that U.S. support for refugee assistance has been dropping like a rock through the 80s."

CORRECTION NOTICE

The April 27, 1990 issue (Vol. XI, No. 4) said that the President's $70 million supplemental appropriation request would be devoted to resettlement costs associated with "an increase in 27,000 refugee admissions over the 110,000 funded places previously authorized for admission to the United States." That is incorrect.

The $70 million in resettlement costs is for the 27,000 additional refugees included within the 110,000 "funded" places in the original FY 90 request, for whom funds had not been budgeted when the President set the FY 90 admissions ceiling.

REFUGEES IN AFRICA, HOUSE HEARING ON ASSISTANCE CRISIS

On May 10, the House subcommittees on Africa and international operations held a joint hearing on the U.S. response to the crisis facing five million refugees and ten million internally displaced people in Africa.

"Preventable deaths are occurring daily," said Rep. Howard Wolpe (D-Mich.), chairman of the Africa subcommittee. "Due to the resource crisis facing the international organizations charged with providing protection and assistance for these populations, an alarming portion of refugees and displaced persons are severely malnourished and increasingly vulnerable to disease epidemics."

The International Committee of the Red Cross (ICRC) made an unprecedented appearance at a House hearing to plea for more funds to meet the refugee crisis. A representative from the UN High Commissioner for Refugees (UNHCR) made a similar plea on behalf of his agency.

Pierre Gassman, the ICRC delegate general for Africa, spoke of declining U.S. financial support for ICRC as a proportion of total contributions. The U.S. contribution, he said, "now stands at something like 10 percent of our expected field expenditure overall in 1990 compared with over 25 percent in 1986."

Nicholas Morris, deputy head of UNHCR's regional bureau for Africa, said UNHCR anticipates a $150 million budget shortfall this year. UNHCR's programs for Africa have recently been cut by 20 percent, he announced, because of the funding crisis. (See previous Recent Development, and Refugee Reports, Vol. X, No. 11 and Vol. XI, No. 2.)

Administration Criticizes UNHCR Priorities

Ambassador Princeton N. Lyman, director of the State Department's Bureau for Refugee Programs, told the House subcommittees that the U.S. would increase its assistance to African refugees from $70 million in FY 90 to $75 million in FY 91. This does not include emergency funds that could be used for unforeseen and urgent developments during the year, nor does the total include food aid provided under the Food for Peace program. Emergency funds represented $14.6 million of the $70 million contributed for African refugee assistance last year.

Lyman said that the Administration had pressed UNHCR to improve financial management and increase cost-sharing with other UN agencies. "To be frank," he said, "we are not satisfied that, either within the total program, or always within individual country programs, UNHCR has allocated sufficient funds to life-sustaining programs in Africa."

Lyman said, "We have pressed UNHCR to give greater priority to assistance programs in the third world--especially in Africa--and, if necessary, less in more developed areas of the world."

UNHCR's Morris responded by saying, "If you are talking about assistance, that is a fair point." He said that more developed countries are better able to sustain their refugee populations. "But," he said, "UNHCR cannot reduce its commitment to protection in Europe." He said that refugees there are being stopped at airports and expelled before having an opportunity even to apply for asylum.

Morris said, however, that the problem will not be solved merely by shifting resources. More money is needed. He quoted the new UN High Commissioner, Thorvald Stoltenberg, as saying, "Almost double the number of refugees are receiving half the amount of assistance per capita compared with ten years ago."

"When I visited Malawi last fall," testified Hiram Ruiz, of the U.S. Committee for Refugees, "the UNHCR and Red Cross representatives there told me that the increase in malnutrition was largely due to the irregularity of food distribution to refugees. That arises because UNHCR cannot afford to keep buffer stocks of food at the refugee camps." Ruiz added, "When delivery of food to the camps is interrupted for whatever reason (including UNHCR's inability to pay truckers), the refugees do not get food."

Horrific Conditions in Ethiopian Camps

The effects of the budget crunch are not confined to southern Africa. Another private witness, Burhan Yussuf H. Adam, a Somali who traveled to Ethiopia at the end of last year to search the refugee camps for missing family members, found shocking conditions.

"People are coming to the camps looking healthy," said Adam, "but after a period of time, they are weaker, sick and malnourished." Nearly ten percent of the population have died in the camps, he said.

Adam said that there are no public or communal latrines in the camps, and no designated areas to bury the dead. Although the refugees are supposed to receive a daily ration of food, Adam alleged that no food

was supplied to the camps during his four-week stay. Corruption in the distribution of food and medicine is rampant, he said, with some food and medicine donated by the international community sold on the "black market." Even water, which has to be shipped into the camps, is sold on the black market. Although the recommended per-capita consumption of water is 20 liters per day, refugees currently receive only 3 liters per day, Adam charged.

Fear in the camps is palpable. "Bandits and armed robbers are present in and around all the camps," he said. "At night, the sound of gunfire makes you feel that you are in a war zone."

Adam said that "UNHCR, the agency that is responsible for the care and protection of the refugees...does not have adequate personnel, resources, or the organization required to fulfill its mission in this region."

INS PILOT PROGRAM TO RELEASE "EXCLUDABLE" ASYLUM SEEKERS ON PAROLE

The Immigration and Naturalization Service (INS) has instituted a pilot program to parole up to 200 detained asylum seekers in the next 18 months in order to see whether it makes sense to release asylum seekers who arrive without valid travel documents.

In announcing the project, which began on May 1, INS Commissioner Gene McNary said that he wanted to determine whether parole of excludable asylum seekers "is feasible and desirable." He added, however, that he continues to think that "detaining asylum seekers can serve as a deterrent against spurious claims."

The pool of 200 asylum seekers in exclusion proceedings will be drawn from Miami, New York, Los Angeles, and San Francisco.

Aliens are placed in "exclusion" proceedings if they are apprehended at a U.S. port of entry, such as an airport, without proper travel documents. This includes those who voluntarily present themselves and ask for asylum. Up until now, they have been detained automatically.

Aliens in "deportation" proceedings are treated differently. They are considered to have entered the United States, and have more legal avenues to fight their removal. Generally they are released from detention if they can assure the INS that they will not abscond and do not pose a threat to the community.

There are more than 7,500 aliens currently in detention in the United States, more than 500 of whom are in exclusion proceedings.

Will They Show Up for Hearings? Among other things, asylum seekers chosen for the pilot program will have to show that they have an attorney, employment, or other means of support, and will have to satisfy the INS district director that the claims in their asylum applications, if proven true, would make them eligible for refugee status.

Those released on parole will be required to report each month to the local INS office and to appear at all hearings before immigration judges.

At the conclusion of the project, the INS will assess its success, primarily by reviewing the percentage of parolees who report to their hearings.

Arthur Helton, director of the Refugee Project of the Lawyers Committee for Human Rights, said, "It is our hope that this release project will demonstrate that many refugees are being unnecessarily incarcerated in the United States."

Helton said that at the conclusion of the 18-month period, his group plans to request a change in the INS rules concerning the detention of asylum applicants. "This project may signal the beginning of the end of one of the harshest elements of the INS's detention policy," he said.

CONGRESS LOOKS AT U.S.-MEXICAN BORDER VIOLENCE

An increase in the incidence of brutality and violence against undocumented aliens attempting to cross from Mexico to the United States was the subject of an April 18 hearing before the House Subcommittee on Human Rights and International Organizations.

"It is clear that something is wrong on our borders," said Chairman Gus Yatron (D-Pa.) in his opening statement, "and the cooperation between U.S.-Mexican authorities is not what it should be." He said, "The Border Patrol has a responsibility to protect our borders and to ensure the laws are

enforced. They are also responsible to ensure that illegal aliens are treated in a humanitarian manner and when abuses occur formal investigations are conducted and disciplinary actions taken."

Two witnesses from the American Friends Service Committee (AFSC) testified about shootings, beatings, and run-overs by Border Patrol vehicles. Maria Jimenez, the director of the AFSC Immigration Law Enforcement Monitoring Project, presented the subcommittee with a list of 380 incidents of abuse along five targeted areas of the border in the one-year period from May 1988 to May 1989.

Although Jimenez said that "Central American refugees suffered disproportionate legal abuses and violation of procedural safeguards," undocumented immigrants from Mexico, accounting for more than 90 percent of those apprehended, "have borne the brunt of death and serious injury as a result of several improper law enforcement practices, i.e., the inappropriate use of firearms, physical abuse, improper high speed chases, vehicle rundowns, and consequences of arrest-pursuit situations.

Roberto L. Martinez of the AFSC's San Diego office said that 33 people had been killed and 48 wounded by the U.S. Border Patrol (USBP) since 1974 in the San Diego area alone. During that same time period, 12 people had reportedly been run over by Border Patrol vehicles. He said that four to six beating incidents are reported to his office each month, and he estimated that only one-fourth of such abuses are reported. "We have evidence," he said, "that many injuries go unreported because the USBP sends victims back across the border without filing an arrest report."

Martinez presented a list of each of the recorded shooting incidents. A number of the cases he spoke about involved persons shot in the back. Two, including a 12-year-old, were shot in the back on the Mexican side of the border by USBP officers on the U.S. side, according to Martinez.

Steven Garcia, a 10-year veteran of the Border Patrol in the San Diego sector and the president of the AFL-CIO local representing Border Patrol agents in the San Diego sector, testified that the overwhelming majority of shootings along the border involve armed bandits. "It needs to be recognized that all of the assaults by bandits...occur swiftly and without warning in the dark of night." He said, "Shots fired by law enforcement officers in these situations are strictly in self-defense."

Garcia's description of the 12-mile stretch of border in San Diego was akin to a war zone. He said that 99 incidents of rock-throwing assaults against USBP agents were recorded in FY 88, and that the number of such incidents jumped to 229 in FY 89. "The incredible volume of traffic in such a small area creates an atmosphere which is frustrating and at times frightening," said Garcia. "Hostile crowds of people hurl rocks, bottles, and insults at Border Patrol Agents who venture close to the border." He added that he had had "innumerable rocks thrown at me" and had seen other USBP agents injured in rock-throwing incidents. He said that 76 USBP vehicle windshields had been smashed by rocks in the past two years.

The AFSC's Martinez gave another perspective on the same San Diego stretch. "The border is not a war zone and immigrants are not the enemy. Violence and hostility must be replaced with compassion and understanding. Barriers, guns, and further militarization must be replaced with bridges of communication and mutual respect for the rights and dignity of immigrants and refugees."

Resources

IMMIGRATION LAW REFERENCE WORKS AVAILABLE

Several reference works relating to the defense of aliens and refugees in immigration proceedings are now available that should greatly enhance the ability of practitioners to defend aliens applying for asylum and to deal with other related areas of immigration law and Immigration and Naturalization Service (INS) conduct.

Kurzban's Immigration Law Sourcebook: A Comprehensive Outline and Reference Tool is a handy book that picks apart the Immigration and Nationality Act word by word, giving legal citations, legislative history, and regulatory framework for understanding the way the law is interpreted and enforced. Of particular interest is the chapter, "Fleeing Persecution," in which every key phrase in the Refugee Act of 1980 is

analyzed in light of federal regulations, INS operating instructions, legislative initiatives, and administrative and judicial interpretations.

The author, Ira Kurzban, a noted immigration attorney from south Florida who has been actively involved in defending the rights of Haitians in the United States, adds the occasional, trenchant observation along the way. For example, in outlining regulations relating to an offer of firm resettlement in a third country as a bar for refugee admission to the United States, Kurzban first notes that an applicant who claims not to be firmly resettled must show that his or her condition of residence in the third country has been substantially and consciously restricted by the authorities of that country. Kurzban goes on to note, however, that "noticeably absent from these considerations is the extent to which a third country can protect the refugee against physical harm from agents of the country of origin."

Generally speaking, however, Kurzban allows the case law to speak for itself. Those wanting quick references on important terms such as "persecution", "fear", "frivolous"; on standards of proof; and on other procedural matters relating in the Refugee Act will find the Immigration Law Sourcebook a useful tool.

The 650-page paperback also includes chapters on the history of immigration law, exclusion and deportation, nonimmigrant visas, permanent resident status, third and sixth preference and labor certification, relief from deportation, administrative review, judicial review, employer sanctions, and naturalization and citizenship, among others.

National Lawyers Guild on Defending the Foreign-Born Following the maze through which a "typical" immigration case wends, Immigration Law and Defense by the National Lawyers Guild (NLG) presents case decisions and INS regulations on important areas of immigration law related to asylum seekers and others in various immigration proceedings. The deportation process is covered thoroughly, from grounds for deportation, through the hearing, and the various grounds for appeal.

The two-volume looseleaf format allows for annual page revisions updating recent developments as they occur.

ACLU Handbook on Alien and Refugee Rights Lay readers may find a recent publication by the American Civil Liberties Union (ACLU) more accessible than either Kurzban's Sourcebook or NLG's guidebook. Following a question-and-answer format, The Rights of Aliens and Refugees explains the basic refugee and asylum policies and procedures in the United States, footnoted with appropriate citations.

Written by four noted attorneys in the field of refugee and alien rights, David Carliner, Lucas Guttentag, Arthur Helton, and Wade Henderson, The Rights of Aliens and Refugees revisits the U.S. Constitution as its starting point in assessing alien rights questions, asserting that "virtually all the protections written into the Constitution are stated in universal terms applicable to all persons, aliens as well as citizens." Disparate treatment of aliens, the authors maintain, stems from legislative acts during periods of hostility toward immigrants. Such restrictive laws have been allowed to stand because of Supreme Court deference to the political branches of government to govern immigration matters "not within any limitations imposed by the Constitution," say the authors, "but 'in accord with ancient principles of the international law of nation-states.'" (For recent examples of court deference to the political branches on the question of asylum, see Refugee Reports, Vol. XI, No. 4.)

The 256-page paperback is one in a series of "The Rights of" various groups published by the ACLU. Among fourteen chapters covering an array of alien rights, special attention is focused on the Immigration Reform and Control Act of 1986, on rights of aliens in deportation and exclusion procedures, and on refugee protection.

How-To-Challenge INS Manual Entering into territory not explored by the other three resources, the National Immigration Law Center (NILC) has published a manual for pursuing administrative and legal remedies for misconduct by the INS and the U.S. Border Patrol. It was written, says the NILC, "to point out the various forms that INS misconduct can take" and to assist in the reporting of complaints about that misconduct. It then provides advice on "the

range of options for remedying such abuse of power" depending on the type of misconduct. Those options, as outlined in the manual, include filing formal complaints with the INS or with the Office of the Inspector General; filing for damages against individual agents or the INS; suing to enjoin future acts of misconduct or from civil rights violations; and challenging policies and practices as unconstitutional.

Like the NLG guide, the NILC manual is published in looseleaf form, facilitating future updates. Its $10 pricetag for nonprofit agencies is also noteworthy.

The AFSC on INS/Border Patrol Abuses Of a more descriptive nature than the NILC manual, the American Friends Service Committee (AFSC) has recently published its second annual report on Human Rights at the Mexico-U.S. Border. It could easily be a companion volume to the NILC manual.

The 34-page report describes allegations of INS and Border Patrol misconduct in San Diego, Tucson, El Paso, south Florida, and the Rio Grande Valley. The subject of the report was recently discussed in a congressional hearing (see Recent Developments).

Ordering Information

° Kurzban's Immigration Law Sourcebook. Send $69.95 ($49.95 for AILA members) to AILA Publications, 1000 16th St., NW, Suite 604, Washington, DC 20036.

° Immigration Law and Defense. Send $175 to Clark Boardman Company, Ltd., 375 Hudson St., New York, NY 10014.

° The Rights of Aliens and Refugees. Send $7.95, plus $2 for postage and handling, to Order Department, Southern Illinois University Press, P.O. Box 3697, Carbondale, IL 62901.

° INS Misconduct: Rights and Remedies in Immigration Law Enforcement. Send $10 (staff of nonprofit agencies) or $25 (private attorneys) to NILC, 1636 West Eighth St., Suite 215, Los Angeles, CA 90017.

° Human Rights at the U.S.-Mexico Border. Available free of charge by writing to the AFSC Immigration Law Enforcement Monitoring Project, 3635 W. Dallas, Houston, TX 77019.

AMNESTY INTERNATIONAL ON VIETNAM

Although welcoming some human rights improvements, including the release of thousands of political prisoners, a February 1990 Amnesty International report, Vietnam: "Renovation" (Doi Moi), the Law and Human Rights in the 1980s, expresses continuing concerns about individual human rights in Vietnam.

Specifically, the report details Amnesty's concerns over "detention without charge or trial of people associated with the former government of the Republic of (South) Vietnam.... [and] of alleged opponents of the government in 're-education camps,'" and over "persistent reports of torture and ill-treatment of people in police custody or while in detention in 're-education' camps." It also notes reports that during 1989 the government intensified its attempts to prevent clandestine departures. "It appears that many people are detained, sometimes without trial, after trying to leave the country clandestinely," the report says.

The report is available for $5.00 from Amnesty International, U.S.A., 322 Eighth Ave., New York, NY 10001. (212) 807-8400.

IN MEMORIAM

The Reverend Dr. Donald H. Larsen, the executive director of the Lutheran and Immigration and Refugee Service, died on May 18. Don, who had directed LIRS since 1985, was highly respected in the refugee field for his deep commitment on behalf of refugees. A long-time leader in InterAction, Don is remembered for his frequent calls for principle, and his unwillingness to settle for political expediency. His wise and compassionate counsel will be missed by all who knew and worked with him.

The staff of the American Council for Nationalities Service and the U.S. Committee for Refugees

REFUGEE ADMISSION LEVELS

Geographic Region	FY 1989 Actual	FY 1990 Ceiling	FY 1991 Request
East Asia:			
First Asylum	27,999	25,000	23,000
Orderly Departure Program	8,002	11,500	14,000
Amerasians	9,683	15,000	15,000
Eastern Europe	8,948	6,500	5,500
Soviet Union	39,553	40,000	40,000
Near East/South Asia	6,980	6,500	6,000
Western Hemisphere	2,605	3,500	3,500
Africa	1,922	3,000	3,000
TOTAL	105,692	111,000*	110,000

* The Presidential Determination ceiling includes an additional 14,000 numbers for private sector initiatives. Of these, 10,000 shall be used for Soviets and 4,000 for any region.

Source: Bureau for Refugee Programs, U.S. Department of State

REFUGEE REPORTS is published monthly for $35.00 per year for one subscription, $25.00 each for two or more subscriptions to the same addressee, or $25.00 each for ten or more subscriptions requested at the same time, mailed to separate addresses; overseas postage is an additional $24.00 for second class or an additional $75.00 for airmail; by ACNS, 95 Madison Avenue, Third Floor, New York, NY 10016. Second Class Postage paid at New York and additional mailing offices. POSTMASTER: send address changes to *Refugee Reports*, Sunbelt Fulfillment Services, P.O. Box 41094, Nashville, TN 37204.

Editorial comments and inquiries should be sent to: *Refugee Reports*, 1025 Vermont Avenue NW, Suite 920, Washington, DC 20005. All communications regarding subscriptions should be sent to: *Refugee Reports* Subscriptions, Sunbelt Fulfillment Services, P.O. Box 41094, Nashville, TN 37204. (615) 377-3322.

Basic subscription rate for 12 issues per year: $35.00; Multiple-copy rate: $25.00; Single copies of back issues: $3.00
Editor: Virginia Hamilton; Staff Writers: Bill Frelick, Court Robinson, and Hiram A. Ruiz
Distribution Manager: Carolyn Moore; Production Coordinator: Koula Papanicolas
© 1989 American Council for Nationalities Service. Rights of reproduction and redistribution reserved. ISSN 0884-3554.

Refugee Reports

A News Service of the U.S. Committee for Refugees, a Project of the American Council for Nationalities Service
Sunbelt Fulfillment Services
P.O. Box 41094
Nashville, TN 37204

20814KIANKE004 JAN91 26000****
ED KIANKA ACQUISITIONS EOTRR
CONGRESSIONAL INFORMATION SER
4520 EAST-WEST HWY STE 800
BETHESDA MD 20814

Address Correction Requested
Return Postage Guaranteed